



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11972513

Date: MAY 14, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an advanced cardiac imaging fellow, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that *after a petitioner has established eligibility for EB-2 classification* (emphasis added), U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,² grant a national interest waiver if a petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a third-year cardiology fellow. The Petitioner presented an offer from [redacted] Hospital [redacted] School of Medicine for a one-year Advanced Cardiac Imaging Fellowship from July 1, 2019 through June 30, 2020, where she would “engage in supervised clinical work and research under a [redacted] State medical training license.”⁴ The Petitioner also provided a letter with her initial filing which discusses her “future research plans.” She indicated that she intends “to continue to pursue clinical outcomes research in cardiology” and has “an interest in non-invasive cardiology, advanced heart failure and advanced cardiac imaging.” The letter also explained that she “plan[s] to continue working in [her] field as a cardiologist with expertise in cardiac imaging.”

In this matter, we ultimately conclude that the Director’s decision does not provide adequate analysis under the three prong *Dhanasar* framework. In addition, the limited discussion regarding national importance under the first prong is more appropriately addressed under the second prong of *Dhanasar*.⁵

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of her work. Here, the record includes information from the CDC regarding the costs of cardiovascular disease, letters of support discussing her proposed research, and documentation regarding the dissemination of her research to others.⁶ The Director’s decision, however, was limited to a short discussion of the Petitioner’s record of citations, presentations, and peer-review. While we may agree with the Director’s conclusion that the record does not establish “that her research has been frequently cited . . . or otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader medical community,” the first prong analysis focuses on the *prospective* (emphasis added) impact of her research and not whether she is well positioned to advance the endeavor.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, information about her current and prospective positions to illustrate the capacity in which she intends to work will be considered in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁵ As noted by the Petitioner, the decision is silent regarding the substantial merit element of the first prong analysis.

⁶ With respect to the Petitioner’s patient care duties at the hospitals where she intends to work, while these endeavors have substantial merit, the record does not establish that her clinical work would impact the field of cardiology or the U.S. healthcare industry more broadly, as opposed to being limited to the patients she serves. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s clinical activities do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

The second prong shifts the focus from the proposed endeavor to the Petitioner. As previously noted, the Petitioner's clinical work does not meet the national importance element of the first prong of the *Dhanasar* framework, and thus need not be discussed further. However, the Petitioner's proposed research in cardiology may have broader implications for the field. The Director's analysis under this prong should focus on whether or not the Petitioner has established that she is well positioned to advance her proposed research,⁷ and not be limited to a discussion of whether she was fully licensed to practice medicine at the time of filing.

Finally, if the Petitioner establishes that she meets the first two prongs of the *Dhanasar* analysis, the Director should then determine whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

For the reasons discussed above, we are remanding the petition. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.

⁷ While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed endeavor. Rather, we must examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890.